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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

All Actions

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PLAINTIFFS' REPLY IN SUPPORT OF
SUPPLEMENTAL MOTION FOR CLASS
CERTIFICATION**

Judge: Honorable Lucy H. Koh

Pursuant to Civil Local Rule 7-11 and 79-5(d), Plaintiffs respectfully request an order from the Court authorizing the filing under seal of the items identified below:

- (1) Portions of Plaintiffs' Reply In Support of Supplemental Motion for Class Certification;
- (2) Portions of Expert Witness Report of Edward E. Leamer, Ph.D.;
- (3) Exhibits A through O and Plaintiffs' Deposition Exhibits 122, 1304, 2738, and 2739, attached to the Declaration of Anne B. Shaver in Support of Plaintiffs' Supplemental Motion for Class Certification; and
- (4) Declaration of Sheryl Sandberg;

Plaintiffs request that the above noted documents be filed under seal because they are or refer to documents or information that Defendants or a Third Party has designated "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107). None of the information at issue was designated as confidential by Plaintiffs. Plaintiffs take no position on whether the designated documents satisfy the requirements for sealing, and specifically reserve the right to challenge any "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107) as well as the sealability of these documents under Civil Local Rule 79-5.

Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court to permit sealing of court documents for, inter alia, the protection of "a trade secret or other confidential research, development, or commercial information." Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has "carved out an exception to the presumption of access to judicial records for a sealed discovery document [attached] to a nondispositive motion," where the requesting party shows good cause exists to keep the records under seal. *Navarro v. Eskanos & Adler*, No. C-06 02231, 2007 U.S. Dist. LEXIS 24864, at *6 (N.D. Cal. March 22, 2007) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) ("[A] 'particularized showing' under the 'good cause' standard of Rule 26(c) will 'suffice[] to warrant preserving the secrecy of sealed discovery material attached to nondispositive motions.'"); see also *Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106,

1 1115 (9th Cir. 2009) (“In light of the weaker public interest in nondispositive materials, we apply the
2 ‘good cause’ standard when parties wish to keep them under seal.”). Although Plaintiffs’ request is
3 narrowly tailored to include only the information that may require confidentiality, Defendants
4 must show good cause for sealing the documents they have placed a confidentiality designation
5 upon by submitting a declaration and proposed order within seven days after the lodging of the
6 designated documents. *See* Civil Local Rule 79-5(d).

7 Pursuant to Local Rule 79-5(d) and this Court’s Standing Order Regarding Motion to File
8 Under Seal, the proposed redacted versions of Plaintiffs’ Reply In Support of Supplemental Class
9 Certification Motion and the Expert Witness Report of Edward E. Leamer, Ph.D have been
10 attached as Exhibits 1 and 2 to this motion and e-filed publicly. Pursuant to this Court’s January
11 11, 2013 Order (Dkt. 269), Plaintiffs’ Reply In Support of Supplemental Class Certification
12 Motion and the Expert Witness Report of Edward E. Leamer, Ph.D. with proposed redactions
13 highlighted in yellow have been attached hereto as Exhibits 3 and 4. Pursuant to Local Rule 79-
14 5(b)(3) and (c)(3), the proposed redacted version of Plaintiffs’ Reply in Support of Supplemental
15 Class Certification Motion, the unredacted version of the same with Yellow highlighting, the
16 proposed redacted version of the Expert Witness Report of Edward E. Leamer, Ph.D., the
17 unredacted version of the same with Yellow highlighting, the Declaration of Sheryl Sandberg,
18 and the unredacted Exhibits have been served on Defendants and lodged with the Court.

1 Dated: July 12, 2013

Respectfully Submitted,

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3 By: /s/ Anne B. Shaver

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